



Protected animal specimens

Draft Code of Practice

Department of Planning and Environment



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Part 1 Introduction

1. Name of code

This code is the *Protected animal specimens code of practice 2023*.

2. Commencement

This code commences on the day that the order making this code is published on the NSW legislation website.

3. Nature and status of code

1. This code is made under clause 2.9 of the Biodiversity Conservation Regulation 2017 (BC Reg).
2. This code is a code of practice relating to dealing in protected animal specimens.
3. It is a defence to a prosecution for an offence under section 2.5 of the *Biodiversity Conservation Act 2016* (BC Act) if the person charged establishes that they meet the eligibility requirements and have wholly complied with each condition of this code.

Note: Compliance with all conditions of the code is a defence to an offence under section 2.5 of the BC Act. Failure to comply with the code takes away this defence, and as a result you may be prosecuted or fined.

Protected animal is defined in Schedule 5 of the BC Act, however, clause 8 specifies that this code does not apply to certain species.

4. Object of code

The object of this code is to authorise dealing in protected animal specimens in New South Wales.

Note: This code does not permit harming an animal in order to acquire a specimen.

5. Interpretation

1. Words and expressions defined in the dictionary at the end of this code have the meaning set out in the dictionary.
2. Other words and expressions that appear in this code have the same meaning as they do in the BC Act and BC Reg, except as otherwise defined in the dictionary.
3. Notes in this code are provided for guidance and do not form part of this code.
4. A reference to an Act, policy, guideline, code, or other document in this code includes any consolidations, amendments, re-enactments, or replacements of any of them.

Part 2 Authorisation of dealing actions

6. Licence not required under this code

Subject to the limitations in clause 8, a defence to a prosecution for an offence under section 2.5 of the BC Act is available for a person who both:

- a. meets the eligibility requirements in clause 7 of this code; and
- b. complies with every clause and requirement under this code.

Note: Other defences, for example, a licence, permit, authority is required if you are unable to comply with the code when dealing in a specimen.

7. Eligibility

A person may only deal in a specimen in New South Wales if they:

- a. are over the age of 16 years; or
- b. are under the age of 16 years, but only with the knowledge and consent of their parent or legal guardian.

Note: please contact the department for information on transitioning from a biodiversity conservation licence to regulation under this code.

8. Limitations of code

1. This code does not apply to:
 - a. specimens of threatened species, marine mammals, sea turtles, or birds of prey
 - b. carcasses of kangaroos harmed for commercial purposes
 - c. carcasses of animals harmed for non-commercial purposes
 - d. the export or import of specimens, except to impose requirements in relation to the retention of information, in accordance with clause 11
 - e. unpreserved specimens, except in accordance with clause 10; or
 - f. ambergris.
2. This code does not authorise or permit preservation of specimens by cryopreservation.
3. Compliance with this code is not required for dealing in scat or other animal waste of a protected animal, excluding ambergris.
4. This code does not authorise a person to preserve an animal by taxidermy.

Note: taxidermy can only be undertaken by a licensed taxidermist, which is defined in the dictionary of this code as: 'a person that holds a biodiversity conservation licence to carry out taxidermy in New South Wales or is authorised under the corresponding laws of another jurisdiction'.

9. General requirements for dealing in specimens

1. If a specimen is imported into Australia, a person may only deal in that specimen if it was imported in accordance with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and CITES.
2. A person may only deal in a carcass, preserved specimen or skeletal remains found by that person if that specimen is found dead and the person did not harm or cause its death.
3. A person may only deal in skin and feathers of a protected animal found by that person if the skin or feathers:
 - a. were naturally shed or moulted from an animal; or

- b. otherwise not attached to an animal, whether or not that animal is alive or dead.
- 4. A person may deal in a non-viable egg or egg shard from a protected animal found by that person if:
 - a. the non-viable egg or egg shard was found broken or empty and the person did not cause the egg to be broken or emptied
 - b. the non-viable egg or egg shard was not collected from a nest.
- 5. A person may only possess a specimen found on land not owned by that person with the prior written consent of:
 - a. the park authority, where the specimen is found in national parks lands
 - b. the owner, where the specimen is found on any other land.
- 6. Nothing in this clause 9 restricts the ability of a person to deal in a specimen purchased or received from another person.

Note. 'Owner' is defined by section 1.6 of the BC Act and includes the registered proprietor of land, or a person who leases land under the *Crown Land Management Act*.

A person may deal in processed animal products such as meat or manufactured articles derived from the skin of a protected animal without a licence or compliance with this code in accordance with clause 2.20 BC Reg.

In New South Wales, emus may be kept under a biodiversity conservation licence to keep or farm emus. Section 2.8(k) of the BC Act provides a defence to an offence under Division 1 of the BC Act for certain acts done by an Aboriginal person for their own domestic purposes, subject to exemptions or requirements provided by the BC Reg.

10. Possessing a carcass for the purpose of preservation

- 1. A person in possession of a carcass or unpreserved specimen intended for preservation by taxidermy must take that carcass or unpreserved specimen to a licensed taxidermist within 3 months of first possessing it.
- 2. The taxidermy preservation process may only be done to a specimen by a licensed taxidermist.

11. Record keeping and notification

- 1. A person may deal in a specimen if they:
 - a. register their personal details and specimen information for each specimen that person possesses at the time of registration with the department online
 - b. update their personal details with the department within 28 days of these details changing; and
 - c. update with the department the specimen information for each specimen that person:
 - i. buys
 - ii. sells; or
 - iii. trades

by the anniversary date each year. To avoid doubt, this clause 11(1)(c) does not apply to a specimen which is only possessed by a person within a relevant 12-month period.
 - d. for the purpose of clause 11(1)(c), anniversary date means the day and month one year after the date a person registers their personal details and specimen information with the department under clause 11(1)(a), and each succeeding date one year after the previous anniversary date.

2. Where a person seeking to obtain a defence under this code is under 16 years old, that person's personal details and specimen information must be provided or updated in accordance with clause 11(1) by that person's parent or legal guardian.
3. For the purposes of clause 11(1) of this code, a person may register or update their personal details and specimen information with the department by contacting the department by contacting the following online [TBD].
4. If the specimen included a specimen tag or label, this must be retained with the specimen.
5. A person must retain records on the third-party information and specimen information on the specimens in which they deal. Third-party information and specimen information must be retained for at least 7 years after the specimen leaves the possession of that person.
6. Where a person imports to New South Wales or exports from New South Wales a specimen, that person must retain:
 - a. the third-party information and the import or export licence number of the other party importing or exporting the specimen
 - b. the specimen information of the imported or exported specimen for at least 7 years after the specimen leaves the possession of that person.

Note: to avoid doubt, this code does not provide a defence to the offence of importing or exporting a specimen in the BC Act. To import or export a specimen, you need to obtain a licence under the BC Act.

7. A person must produce specimen Information, specimen tags or labels to an authorised officer of the department under the BC Act upon request.

Note: If you are seeking a defence under this code, it is an offence under clause 2.38 of the BC Reg to not keep records, not register details with the department, or refuse to produce records upon request of an authorised officer in accordance with the terms of this code.

You must update the specimen information for the specimens you buy, sell, import, export, or trade once every 12 months. The deadline to update specimen information is the anniversary of the date you first registered your details under this code. For example, if you register your details on 25 June 2023 you will need to update the species information for the specimens you buy, sell, trade, import or export by 25 June every year. You don't need to update your specimen information if you only possess a specimen within that 12-month period.

Personal details disclosed for the purpose of this code will be managed by the department in accordance with its obligations under the *Privacy and Personal Information Protection Act 1998*.

When disposing of preserved specimens, please consider offering them to an educational institution or organisation, e.g. Australian Museum.

Dictionary

BC Act means the *Biodiversity Conservation Act 2016*

BC Reg means the Biodiversity Conservation Regulation 2017

Bird of prey means an animal classified as Falconiformes (eagles, hawks, falcons) or Strigiformes (owls).

CITES means the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*.

Classification means the specific type of specimen in which a person deals, including the examples listed under the definition of specimen. For example, carcass, preserved species, etc.

Cryopreservation means the process of freezing specimens using liquid nitrogen at very low temperatures, but does not include freezing specimens through other methods, such as storing the specimen in a regular freezing appliance.

Deal and Dealing means to:

- a. possess
- b. buy
- c. sell; or
- d. trade

a specimen, but for the purposes of this code, does not include importing or exporting a specimen.

Department means the NSW Department of Planning and Environment or any department replacing it.

EPBC Act means the *Environment Protection and Biodiversity Act 1999* (Cth) or any subsequent Federal legislation regulating the trade of fauna to and from Australia.

Licensed taxidermist means a person that holds a biodiversity conservation licence to carry out taxidermy in New South Wales or is authorised under the corresponding laws of another jurisdiction.

Non-viable, in reference to an egg, means an egg where there is no chance of a live animal hatching from it prior to when that egg was found or otherwise in the possession by a person.

NPW Act means the *National Parks and Wildlife Act 1974*.

NPW Lands means land reserved under the NPW Act or acquired under Part 11 of the NPW Act.

Park authority has the same meaning as in the National Parks and Wildlife Regulation 2019.

Personal details means a person's:

- e. full name
- f. residential address
- g. date of birth
- h. phone number; and
- i. email address

but does not include third-party information.

Person means a person seeking a defence under this code.

Preservation means the process of cleaning and preparing whole animal carcasses, skeletons, or parts thereof for display or study, including by means of taxidermy or wet preservation but does not include cryopreservation.

Preserved specimen means a specimen that has undergone preservation.

Skeletal material means whole or part of the skeleton of a dead protected animal, including teeth and may include intact limbs or bones with or without skin or other coverings such as feathers or scales.

Specimen includes:

- a. preserved carcasses
- b. eggs or egg shards
- c. feathers
- d. preserved specimens
- e. skeletal material
- f. preserved skins; and

any other part of a protected animal that is not living, but does not include the scat, ambergris or other waste of a protected animal.

Specimen information means the following information applicable to a particular specimen:

- a. the number, species, and classification of specimens
- b. where the specimen is preserved by taxidermy, the name and address of the licensed taxidermist (if known)
- c. the date on which the specimen was dealt
- d. the location from which the specimen was sourced
- e. if applicable, the written consent of the park authority or owner giving the person permission to take the specimen
- f. the details of any tags or labels, if not already captured by this definition
- g. the source of the specimen, including licence details under NSW legislation or corresponding laws of another state or territory or international jurisdiction.

Taxidermy means the process of preparing, filling, and mounting skins of animals so they have a lifelike appearance.

Third-party information means the:

- a. name
- b. address; and
- c. email or phone number

of the person or business from or to whom a specimen is dealt.

Unpreserved specimen means the blood, tissue or organs of an animal, but does not include:

- a. clean bones
- b. feathers
- c. fur attached to preserved skin
- d. nails; or
- e. horns.

Wet preservation means the preservation of whole animals or part thereof via immersion in a preserving liquid in a jar or resin.

